

[DISCUSSION DRAFT]

NOVEMBER 17, 2008

110TH CONGRESS
2D SESSION

H. R. _____

To amend the Emergency Economic Stabilization Act of 2008 to authorize
loans to automobile manufacturers, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

M____. _____ introduced the following bill; which was referred to the
Committee on _____

A BILL

To amend the Emergency Economic Stabilization Act of
2008 to authorize loans to automobile manufacturers,
and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the
5 “[_____] Act of 2008”.

1 **SEC. 2. DIRECT LOAN PROVISIONS.**

2 (a) IN GENERAL.—The Emergency Economic Sta-
3 bilization Act of 2008 (division A of Public Law 110–343)
4 is amended by adding at the end the following:

5 **“TITLE IV—DIRECT LOAN PROVI-**
6 **SIONS FOR DOMESTIC AUTO**
7 **INDUSTRY**

8 **“SEC. 401. FINDINGS.**

9 “The Congress finds that emergency circumstances
10 have prevented the automobile industry from securing
11 credit from other sources and that the failure of the auto-
12 mobile industry to obtain credit will have a systemic ad-
13 verse effect on the economy.

14 **“SEC. 402. PURPOSES.**

15 “(a) IN GENERAL.—The purposes of this title are—

16 “(1) to immediately provide authority and fa-
17 cilities to be used by the Secretary to restore liquid-
18 ity and stability to the automobile industry in the
19 United States;

20 “(2) to ensure that such authority and such fa-
21 cilities are used in a manner that—

22 “(A) stimulates manufacturing and sales
23 of automobiles produced by automobile manu-
24 facturers in the United States;

25 “(B) enhances the ability and the capacity
26 of the domestic automobile industry to pursue

1 the timely and aggressive production of energy-
2 efficient advanced technology vehicles;

3 “(C) preserves and promotes the jobs of
4 355,000 workers in the United States directly
5 employed by the automobile industry and an
6 additional 4,500,000 workers in the United
7 States employed in related industries; and

8 “(D) safeguards the ability of the domestic
9 automobile industry to provide retirement and
10 health care benefits for 1,000,000 retirees and
11 their dependents; and

12 “(3) to reaffirm the purposes of section 2,
13 which include providing the Secretary with broad au-
14 thority to restore liquidity and stability to financial
15 institutions, including automobile finance companies.

16 “(b) COORDINATION WITH OTHER LAWS REGARD-
17 ING PROMOTION OF ADVANCED TECHNOLOGY VEHICLE
18 MANUFACTURING.—No provision of this title shall be con-
19 strued as altering, affecting, or superseding the provisions
20 of section 129 of division A of the Consolidated Security,
21 Disaster Assistance, and Continuing Appropriations Act,
22 2009, relating to funding for the manufacture of advanced
23 technology vehicles.

1 **“SEC. 403. OVERSIGHT, REPORTS, AND AUDITS.**

2 “(a) COMPOSITION OF FINANCIAL STABILITY OVER-
3 SIGHT BOARD.—For purposes of this title and to carry
4 out the duties under subsection (b) and title I (as such
5 duties apply to this title), the Financial Stability Oversight
6 Board shall be composed of—

7 “(1) the members described in section 104(b);

8 “(2) the Secretary of Energy;

9 “(3) the Secretary of Labor;

10 “(4) the Secretary of Transportation; and

11 “(5) the Administrator of the Environmental
12 Protection Agency.

13 “(b) DUTIES AND RESPONSIBILITIES FOR OVER-
14 SIGHT, REPORTS, AUDITS, AND OTHER FUNCTIONS.—

15 The Financial Stability Oversight Board, the Comptroller
16 General of the United States, the Special Inspector Gen-
17 eral of the Troubled Asset Relief Program, and the Con-
18 gressional Oversight Panel shall have the same duties, re-
19 sponsibilities, and functions with respect to the loans ex-
20 tended under this title as such officers and entities have
21 under sections 116, 121, and 125 with respect to actions
22 taken by the Secretary under title I.

23 **“SEC. 404. EMERGENCY DIRECT LOAN PROGRAM.**

24 “(a) IN GENERAL.—Not earlier than December 1,
25 2008, the Secretary shall make loans to automobile manu-
26 facturers that have—

1 “(1) submitted a completed application for a
2 loan under this title that includes a statement of
3 need for Government funding under this title to pre-
4 vent a systemic adverse effect on the economy;

5 “(2) operated 2 or more manufacturing facili-
6 ties for the purposes of producing automobiles in the
7 United States throughout the 25-year period ending
8 on the date of enactment of this title; and

9 “(3) operations in the United States the failure
10 of which would have a systemic adverse effect on the
11 overall United States economy, as determined by the
12 Secretary, in consultation with the Financial Sta-
13 bility Oversight Board.

14 “(b) APPLICATION AND SHORT-TERM OPERATING
15 PLAN.—An application for a loan under this title shall not
16 be complete for purposes of subsection (a) until the appli-
17 cant for the loan has submitted to the Secretary—

18 “(1) such financial and other information as
19 the Secretary may require to make a determination
20 under this section; and

21 “(2) a short-term operating plan that describes
22 the planned use of the loan proceeds, including a
23 commitment of resources to develop the long-term
24 plan described in section 405, and reasonable pros-
25 pects for repayment of any loans under this title.

1 “(c) ALLOCATION.—

2 “(1) IN GENERAL.—In allocating loan amounts
3 under this title, the Secretary, in consultation with
4 the Financial Stability Oversight Board, shall
5 prioritize applications based on the magnitude of the
6 impact of the manufacturing operations of the appli-
7 cant in the United States on the overall economy of
8 the United States and other segments of the auto-
9 mobile industry, including the impact on levels of
10 employment, domestic manufacturing of automobiles
11 and automobile components, and automobile dealer-
12 ships.

13 “(2) ALLOCATION BETWEEN SHORT-TERM
14 BRIDGE LOAN AND LONGER-TERM LIQUIDITY AND
15 RESTRUCTURING FUNDING.—The Secretary shall—

16 “(A) designate a portion of the funds as
17 available to meet the short-term funding needs
18 of eligible applicants prior to the submission
19 deadline for a long-term structuring plans re-
20 quired under section 405; and

21 “(B) reserve the balance to fund additional
22 liquidity needs and implementation of any re-
23 structuring plan determined to be acceptable
24 under section 405.

1 **“SEC. 405. LONG-TERM RESTRUCTURING PLAN ENSURING**
2 **VIABILITY, INTERNATIONAL COMPETITIVE-**
3 **NESS, AND ENERGY EFFICIENCY.**

4 “(a) IN GENERAL.—No later than March 31, 2009,
5 recipients of loans under this title shall submit to the Sec-
6 retary an acceptable restructuring plan to achieve and sus-
7 tain the long-term viability and international competitive-
8 ness of the industry, including—

9 “(1) achievement of the fuel efficiency require-
10 ments and commencement of domestic advanced
11 technology vehicle manufacturing as authorized in
12 the Energy Independence and Security Act of 2007;

13 “(2) efforts to rationalize costs and capitaliza-
14 tion with respect to the recipient’s manufacturing
15 workforce, suppliers, and dealerships; and

16 “(3) proposals to restructure existing debt, in-
17 cluding where appropriate the conversion of debt to
18 equity, to improve the recipient’s ability to raise pri-
19 vate capital.

20 “(b) CONSULTATION.—In determining whether a re-
21 structuring plan submitted under this section is accept-
22 able, the Secretary shall consult with the Financial Sta-
23 bility Oversight Board.

1 **“SEC. 406. AUTHORIZATION AND LIMITATION.**

2 “(a) IN GENERAL.—The total amount of all loans
3 made by the Secretary under this title shall be not greater
4 than \$25,000,000,000.

5 “(b) FUNDING FROM THIRD TRANCHE.—The costs
6 incurred by the Federal Government in making loans
7 under this title, including credit subsidy costs and admin-
8 istrative expenses, shall be covered out of the funds made
9 available to the Secretary generally under section 118 and,
10 specifically, not from funds which are described in para-
11 graph (1) or (2) of section 115(a) but with respect to the
12 availability of which the reporting and procedural require-
13 ments contained in paragraph (3) of such section and sec-
14 tion 115(c) shall not apply.

15 **“SEC. 407. TIMING OF DISBURSEMENTS.**

16 “(a) APPLICATIONS.—

17 “(1) IN GENERAL.—After the end of the 3-day
18 period beginning on the date of the enactment of
19 this title, the Secretary shall accept completed appli-
20 cations for loans under this title.

21 “(2) ELIGIBILITY.—Not later than 15 days
22 after the date on which the Secretary receives a
23 completed application for a loan under this title, but
24 not earlier than December 1, 2008, the Secretary
25 shall—

1 “(A) make a determination regarding the
2 eligibility of the applicant, based on whether the
3 applicant meets the requirements under section
4 404; and

5 “(B) determine the short-term liquidity
6 needs of the applicant necessary to fund such
7 applicant until submission of an acceptable
8 long-term restructuring plan.

9 “(b) DISBURSEMENT.—No earlier than December 1,
10 2008, the Secretary shall begin disbursement of the pro-
11 ceeds of a loan under this title necessary to meet the
12 short-term liquidity needs of the applicant (as determined
13 under subsection (a)(2)(B)) not later than 7 days after
14 the date on which the Secretary determines the applicant
15 is eligible under subsection (a) and consistent with liquid-
16 ity needs after receipt of a disbursal request from the ap-
17 plicant. The Secretary may disburse additional funding for
18 continuing liquidity needs as necessary to achieve an ac-
19 ceptable restructuring plan and for restructuring in ac-
20 cordance with section 405.

21 **“SEC. 408. TERMS AND CONDITIONS.**

22 “(a) TERM TO MATURITY.—The term to maturity of
23 any loan made under this title shall be 7 years or such
24 longer period as the Financial Stability Oversight Board
25 may determine with respect to such loan. Loans made to

1 fund short-term liquidity needs prior to submission of an
2 acceptable restructuring plan shall be subject to accelera-
3 tion of payment if an acceptable long-term restructuring
4 plan is not submitted in the manner required under sec-
5 tion 405.

6 “(b) RATE OF INTEREST.—The annual rate of inter-
7 est for a loan under this title shall be—

8 “(1) 5 percent during the 5-year period begin-
9 ning on the date on which the Secretary disburses
10 the loan; and

11 “(2) 9 percent after the end of the period de-
12 scribed in paragraph (1).

13 “(c) WARRANTS.—

14 “(1) IN GENERAL.—The Secretary may not
15 make a loan under this title unless the Secretary re-
16 ceives from the recipient of the loan—

17 “(A) in the case of a recipient the securi-
18 ties of which are traded on a national securities
19 exchange, a warrant giving the right to the Sec-
20 retary to receive nonvoting common stock or
21 preferred stock in such recipient, or voting
22 stock with respect to which, the Secretary
23 agrees not to exercise voting power, as the Sec-
24 retary determines appropriate; or

1 “(B) in the case of any loan recipient other
2 than one described in subparagraph (A), a war-
3 rant for common or preferred stock, or an in-
4 strument that is the economic equivalent of
5 such a warrant.

6 “(2) AMOUNT.—

7 “(A) IN GENERAL.—A warrant or instru-
8 ment described in paragraph (1) shall have a
9 value equal to 20 percent of the amount of the
10 loan disbursed to the loan recipient, or such
11 greater value as may be determined by the Sec-
12 retary in consultation with the Financial Sta-
13 bility Oversight Board.

14 “(B) WARRANT PRICE.—The exercise price
15 on a warrant described in paragraph (1) shall
16 be the 15-day average of the market price of
17 the common stock of the loan recipient prior to
18 【the date on which the bill which provides for
19 the enactment of this title is introduced in the
20 House of Representatives 【Insert date】】.

21 “(3) APPLICATION OF OTHER PROVISION OF
22 LAW.—The requirements for purchase of warrants
23 under the provisions of section 113(d)(2) shall apply
24 to any warrant or instrument described in paragraph
25 (1).

1 “(d) EXECUTIVE COMPENSATION AND CORPORATE
2 GOVERNANCE.—

3 “(1) IN GENERAL.—During the period in which
4 any loan extended under this title remains out-
5 standing, the recipient of the loan shall be subject
6 to—

7 “(A) the requirements established by the
8 Secretary under paragraph (2); and

9 “(B) the provisions of section 162(m)(5) of
10 the Internal Revenue Code of 1986, as amended
11 by section 302, as applicable.

12 “(2) STANDARDS REQUIRED.—The Secretary
13 shall require any recipient of a loan under this title
14 to meet appropriate standards for executive com-
15 pensation and corporate governance.

16 “(3) SPECIFIC REQUIREMENTS.—The standards
17 established under paragraph (2) shall include the
18 following:

19 “(A) Limits on compensation that exclude
20 incentives for senior executive officers of a re-
21 cipient of a loan under this title to take unnec-
22 essary and excessive risks that threaten the
23 value of such recipient during the period that
24 the loan is outstanding.

1 “(B) A provision for the recovery by such
2 recipient of any bonus or incentive compensa-
3 tion paid to a senior executive officer based on
4 statements of earnings, gains, or other criteria
5 that are later found to be materially inaccurate.

6 “(C) A prohibition on such recipient mak-
7 ing any golden parachute payment to a senior
8 executive officer during the period that the loan
9 is outstanding.

10 “(D) A prohibition on such recipient pay-
11 ing or accruing any bonus or incentive com-
12 pensation during the period that the loan is
13 outstanding to any employee whose annual base
14 compensation exceeds \$200,000 (which amount
15 the Secretary shall adjust for inflation).

16 “(E) A prohibition on any compensation
17 plan that could encourage manipulation of such
18 recipient’s reported earnings to enhance the
19 compensation of any of its employees.

20 “(4) DEFINITIONS.—For purposes of this sub-
21 section, the following definitions shall apply: —

22 “(A) SENIOR EXECUTIVE OFFICER.—The
23 term ‘senior executive officer’ means an indi-
24 vidual who is 1 of the top 5 highly paid execu-
25 tives of a public company, whose compensation

1 is required to be disclosed pursuant to the Se-
2 curities Exchange Act of 1934, and any regula-
3 tions issued thereunder, and non-public com-
4 pany counterparts.

5 “(B) GOLDEN PARACHUTE PAYMENT.—

6 The term ‘golden parachute payment’ means
7 any payment to a senior executive officer for
8 departure from a company for any reason.

9 “(e) NO PREPAYMENT PENALTY.—A loan made
10 under this title shall be prepayable without penalty at any
11 time.

12 “(f) PROHIBITION ON PAYMENT OF DIVIDENDS.—No
13 dividends of any kind may be paid by any recipient of a
14 loan under this title for the duration of the loan.

15 “(g) OTHER INTERESTS SUBORDINATED.—Any obli-
16 gation or liability of a recipient of a loan under this title
17 to any person shall be subordinate to the liability and obli-
18 gation of the recipient for such loan.

19 “(h) INFORMATION ACCESS .—As a condition for any
20 loan made under this title, the recipient shall agree—

21 “(1) to allow the Secretary and the Financial
22 Stability Oversight Board to examine any books, pa-
23 pers, records, or other data of the loan recipient that
24 may be relevant to the loan, including compliance

1 with the terms of the loan or any conditions imposed
2 under this title; and

3 “(2) to provide any information requested by
4 the Secretary or the Financial Stability Oversight
5 Board, including requiring any officer or employee of
6 the recipient or any person having possession, cus-
7 tody, or care of the reports and records required
8 under paragraph (1), to appear before the Secretary
9 of the Treasury or his delegate or the Board at a
10 time and place requested and to provide such books,
11 papers, records, or other data, as requested, as may
12 be relevant or material.

13 “(i) OVERSIGHT OF TRANSACTIONS AND FINANCIAL
14 CONDITION.—

15 “(1) DUTY TO INFORM.—During the period in
16 which any loan extended under this title remains
17 outstanding, the recipient of such loan shall prompt-
18 ly inform the Secretary and the Financial Stability
19 Oversight Board of—

20 “(A) any asset sale, investment, contract,
21 or commitment proposed to be entered into by
22 such recipient that has a value in excess of
23 \$25,000,000; and

24 “(B) any other material change in the fi-
25 nancial condition of such recipient.

1 “(2) AUTHORITY OF THE SECRETARY.—During
2 the period in which any loan extended under this
3 title remains outstanding, the Secretary, in consulta-
4 tion with the Financial Stability Oversight Board
5 may—

6 “(A) review any asset sale, investment,
7 contract, or commitment described in para-
8 graph (1); and

9 “(B) prohibit the recipient of the loan
10 from consummating any such proposed sale, in-
11 vestment, contract, or commitment.

12 “(3) REGULATIONS.—The Financial Stability
13 Oversight Board may establish, by regulation, proce-
14 dures for conducting any review under this sub-
15 section.

16 “(j) ACCELERATION OF REPAYMENT FOR FAILURE
17 TO COMPLY.—The terms of any loan made under this title
18 shall provide that, in the event that a recipient fails to
19 submit an acceptable long-term restructuring plan re-
20 quired under section 405 or fails to comply with any other
21 condition or requirement applicable under this title or any
22 requirement relating to corporate average fuel economy
23 (CAFÉ) standards applicable to such recipient, the Sec-
24 retary may require, in consultation with the Financial Sta-
25 bility Oversight Board, repayment of the loan to be accel-

1 erated to such earlier date or dates as the Secretary may
2 determine.

3 “(k) RULE OF CONSTRUCTION.—No provision of this
4 title shall be construed as prohibiting any recipient of a
5 loan under this title from making any contractually re-
6 quired payments to trust funds established to fund obliga-
7 tions for retiree health benefits.”.

8 (b) TECHNICAL AND CONFORMING AMENDMENTS.—
9 The table of contents in section 1(b) of the Emergency
10 Economic Stabilization Act of 2008 (division A of Public
11 Law 110–343) is amended by adding at the end the fol-
12 lowing new item:

“TITLE IV—DIRECT LOAN PROVISIONS FOR DOMESTIC AUTO
INDUSTRY

“Sec. 401. Findings.

“Sec. 402. Purposes.

“Sec. 403. Oversight, reports, and audits.

“Sec. 404. Emergency direct loan program.

“Sec. 405. Long-term restructuring plan ensuring viability, international com-
petitiveness, and energy efficiency.

“Sec. 406. Authorization and limitation.

“Sec. 407. Timing of disbursements.

“Sec. 408. Terms and conditions.”.